

A REPORT OF MODEST SUCCESS WITH A VARIATION OF THE PROBLEM METHOD

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In view of the perennial dissatisfaction of third-year law students with the traditional case method, it would be a dereliction to fail to report upon the use of a relatively non-burdensome variation of the problem method which seems to receive student approval. The format, used twice to teach Conflict of Laws, a four-hour one-quarter elective at Ohio State, retains some of the values of the case method but has the advantage of satisfying, at least temporarily, some of the more vociferous demands of disenchanted seniors. If adopted in a few third-year courses this format will at least keep the students too busy with course work to complain about more far-reaching deficiencies in the curriculum. Thus, consideration of genuine reform can proceed quietly in an atmosphere of calm deliberation without external pressure.¹

The method is not revolutionary. It will have a familiar ring to those familiar with the pages of this journal.² Students are given problems and are required to write briefs or memorandums and come to class prepared to argue or discuss them. The casebook is used as the source material,³ and sections thereof are assigned for each problem. Students who are not given the task (at the beginning of each class meeting) of arguing the case or presenting discussion of their memorandums are required to participate as judges or discussants. Students are divided into groups and each group meets with the instructor only once each week. Briefs and memorandums are corrected for form, language and substance, with comments, and are returned, preferably at the group meeting following the one at which they were the subject of discussion. Formal presentations and class participation are graded. There is no final examination.

I have used this format twice to teach Conflict of Laws. The first time, in the spring quarter, 1968, twenty-four students were enrolled in the course and were divided into four groups of six students each. During the first two weeks the entire class met in the usual way four times per week. The conventional method was used to discuss domicile, renvoi and characterization and the requirements of the rest of the course were described: Each student was to be required to write a total of seven briefs and memos, one for each of the

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¹ An impressionist view of the position I hold on curricular reform may be divined by extrapolating from my article, *Revising the Torts Course*, 21 U.Miami L.Rev. 558 (1967).

² See generally the authorities cited in notes 1, 2 and 4 in Del Luca, *Continuing Evaluation of Law School Curricula—An Initial Survey*, 20 J. of Leg.Ed. 309 (1968).

The format reported upon in this article is an unimaginative variation of the theme espoused by Professor Cavers in 1943. Cavers, *In Advocacy of the Problem Method*, 43 Colum.L.Rev. 449, 456 (1943).

³ Although there is no reason why other materials, legal and non-legal, may not be assigned.

following seven weeks. The final, tenth week, was left open and ultimately used for a summary.

Beginning with the third week each group convened only once a week. The average meeting ran about fifteen or twenty minutes longer than the normal class of fifty-five minutes. When the problem called for a brief, one half of a group (3 students) would be assigned to plaintiff's side and the other half to the defendant's side. During the group meeting the two students assigned to argue would each be given twenty-five minutes. Non-arguing students, sitting as judges, were permitted to interrupt to ask questions, as was the instructor. Normally, I would not interrupt unless I felt that difficult issues were being avoided or that the discussion was being sidetracked into irrelevancies or factual disputes, fairly frequent occurrences. The last third of the period was spent in a critique of the arguments and a discussion or summary of the trends and policies.

When memos instead of briefs were assigned one student would be asked to discuss his views of the problem in about thirty-five to forty-five minutes. Another student was then assigned to criticize the presentation of the first student to correct errors and to fill in omissions. The remainder of the period was used for open discussion led by the instructor, and for a summary.

Most of the papers received were typed and ran from five to fifteen double-spaced pages.⁴ Early efforts were often pathetic, both as to language and organization, although substantive arguments, once deciphered, were usually satisfactory if not inspiring. During the course writing, organization and the convincing force of arguments seemed to improve markedly for a substantial number of students. I attribute this improvement to the not surprising fact that many of the students had had few, if any, prior writing experiences, either in college or law school, in which their work was criticized or commented upon in detail both for form and substance.⁵ Many of the errors were so elementary—misspellings, catachreses, run-on sentences, excessive use of "legalese," unnecessarily split infinitives, mixed tenses, inconsistent use of singular and plural, and the like—that merely calling the students' attention to their errors once was usually a sufficient corrective, especially since I warned them that errors in one paper which were repeated in a later paper would result in lower grades. Other, more complicated, deficiencies, such as awkward or ungrammatical sentence structure, weak or unconvincing phraseology and poor organization, were called to the students' attention with suggestions for improvement.

The sophistication of substantive arguments in the briefs also showed improvement as the weeks passed. Early efforts tended to emphasize "black-

⁴ Typing was recommended but not required and some papers were handwritten. Some students apparently felt sufficient pride in their work to have their papers typed professionally.

⁵ All students had been exposed to the first and some to the second-year moot court program. Writing in the program, however, was usually supervised by third-year law students. All of the students had had at least one exposure to either a one-quarter third-year research seminar or a planning seminar. One of each was required for all third-year students. However, practices of seminar instructors varied widely as to the extent to which students were required to revise drafts of written papers and the extent to which papers were corrected for form and language and returned with comments and corrections.

letter" law. Frequently, students would recite the holdings of cases in order as they appeared in the pages of the materials assigned from the casebook, merely indicating whether each case supported their position or, if it did not, suggesting how it might be distinguished. However, oral arguments tended to become quite sophisticated, requiring discussion of policy issues, developing trends and theoretical approaches. A minority of students found that they had not read the material with sufficient thought to enable them to understand the oral arguments and ensuing discussion. Others recognized that the black-letter approach in oral argument would just not satisfy the better students sitting as judges (not to mention the instructor). In consequence, most of the students began to refer to the treatises and law review articles cited in the casebook for assistance. Citations to these sources began to show up in the written work with increasing frequency in the later weeks of the quarter.

Interestingly, the students sitting as judges were not the least bit hesitant to ask difficult questions of their colleagues or even to embarrass them by raising issues, arguments and lines of reasoning that had been entirely overlooked and by pointing out inconsistencies and weaknesses. Sometimes, in fact, the rigorous questioning and the sarcasm following a poor response tended to crush timid or weak students and had to be softened by the instructor in order to salvage a bit of the arguer's self-respect.⁶

In spite of its heavy demands for writing and preparation, the format received an overwhelmingly favorable response. After the spring, 1968, course was completed a questionnaire was handed out to all the participants. Anonymity was preserved if desired. Twenty-two of the twenty-four students responded. These are the results:

(1) How would you rate the value of our course format (small group meetings held once a week plus a weekly memo or brief) in comparison with the more conventional format (regular class meetings 4 times per week)?

- 7 - (a) Our format vastly superior
- 12 - (b) Our format better
- 3 - (c) About the same
- 0 - (d) Our format not as good
- 0 - (e) Our format vastly inferior

(2) Did you do more or less work for our course than you ordinarily do for "regular" 4-hour courses?

- 12 - (a) Much more
- 8 - (b) More
- 2 - (c) About the same
- 0 - (d) Less
- 0 - (e) much less

(3) Did you find the work you were doing for our course more or less interesting than the work you perform in more conventional courses?

- 9 - (a) Much more
- 10 - (b) More
- 2 - (c) About the same
- 0 - (d) Less
- 0 - (e) Much less

⁶ This sort of psychic first-aid was withheld from students whose arguments appeared to suffer from lack of preparation.

(4) Were you regularly better or less adequately prepared for Conflict of Laws than for your other classes?

- 7 - (a) Much better
- 14 - (b) Better
- 0 - (c) About the same
- 1 - (d) Less
- 0 - (e) Much less

(5) To what extent, if at all, did the time you spent preparing for Conflict of Laws infringe upon the time you would ordinarily have spent on other courses?⁷

- 2 - (a) Substantially infringed
- 11 - (b) Infringed somewhat
- 5 - (c) Infringed slightly
- 4 - (d) Did not infringe

(6) Did you find that the time I suggested for the preparation of your weekly assignments—"the normal time you would be expected to spend on a 4-hour course" (8 to 12 hours)—was adequate?

- 1 - (a) More than adequate
- 13 - (b) Adequate
- 8 - (c) Inadequate

(7) If your answer to question 6 was (c), how many hours on the average did you spend each week?

- range: 10 - 16 hours
- average: 14.2 hours

(8) Did you find that you gained practical experience from the written assignments?⁸

Yes 21; No 1

(9) Were my notes on your written assignments useful?

- 4 - (a) Very
- 14 - (b) Moderately
- 3 - (c) No
- 0 - (d) Confusing

(10) As between writing briefs and writing memos, which did you prefer?

- 10 - (a) Briefs
- 7 - (b) Memos
- 3 - (c) No preference

⁷ I informed the students that I would expect them to spend about as much time writing papers for this course as I would expect them to spend in a conventional course—two to three hours for each credit hour. This recommended time allocation was a factor which I considered in grading papers. A student could get an "A" for a less-than-perfect paper if it seemed to be a substantial effort when considered in light of the number of hours I expected him to spend on it.

If the average time spent by most students was fourteen hours (cf., question 7, *infra*), then the requirements of this format should not have infringed upon the time ordinarily spent in other courses unless students were not spending the kind of time we expected of them and were engaged in other activities. In this course students were released from three class hours per week which should have provided three additional free hours for research and writing.

⁸ It was gratifying to note that most students seemed to appreciate that study of theory and policy could provide "practical experience."

(11) Do you feel that you understand the materials in Conflict of Laws better or less well than you understand your other subjects?

12 - (a) Better

9 - (b) About the same

1 - (c) Less well

The second time I used this format, in the Conflict of Laws course in the spring quarter, 1969, the approach was changed slightly. First, I had students write only briefs in order to avoid the rambling discussions or reading of papers which occasionally attended oral presentations of memorandums.⁹ Second, since forty-one students enrolled instead of the twenty-four in 1968,¹⁰ I had each student write a brief every other week rather than a weekly paper. Eight problems were handed out; each student had to write on one side of four problems. In consequence, the students had more time to write and less pressure, and the briefs tended to be longer, more complete and better written than the papers in the earlier course. Students were told that they had to read the assignments and participate in questioning even during the alternate weeks in which they were not responsible for a paper. They were also advised that the material tended to be cumulative, so that a failure to read interim assignments would adversely affect their ability to deal with the issues in subsequent papers. So far as I could tell from the quality of the questions and class discussion and from the content of subsequent papers, most students kept abreast of all of the materials during the entire course.

Although I did not hand out a questionnaire at the end of the spring, 1969, course, my impression from private conversations with many members of the class was that the group was equally as enthusiastic about the format as the 1968 group. Since gratuitous praise from seniors who are already assured of graduation is rare, I feel confident that the favorable responses were genuine.

The Instructor's Task

An obvious question about the use of this format is, How much of an extra burden does it create for the instructor? Frankly, I don't think the added work, if any, is either excessive or unreasonable, especially in the context of increasing (and perhaps legitimate) demands by students for more time and personal attention from teachers. The writing of eight comprehensive problems during the beginning of the course is perhaps more difficult and time-consuming than writing a four or five question final. I found, however, that the extra time spent in the spring of 1968 was more than compensated for by

⁹ In his 1943 article Professor Cavers anticipated this problem: "The instructor would . . . be wise to avoid so far as possible the report technique which so generally reduces a seminar to a lecture course conducted by a series of ill-qualified lecturers—the students." Cavers, *In Advocacy of the Problem Method*, 43 *Colum.L. Rev.* 449, 457 (1943).

¹⁰ The course is an elective. Although some students in the 1969 group said that they took the course because they heard favorable comments from members of the 1968 group, it is not clear whether the increase in enrollment was attributable to favorable propaganda or to the exigencies of scheduling. It is clear, however, that the 1969 group did not contain any students who were unfavorably disposed to the format as they undertook it. Students in the 1968 group, on the other hand, were not told about the new format until after the course commenced. Several students then dropped the course.

the savings achieved in 1969 by using variations of the seven original problems. The students in 1969 might have received some assistance by reading briefs or memorandums written in 1968, but very little indeed. Furthermore, they could hardly rely on prior papers to provide the background necessary to prepare themselves for oral argument. It may be that it is easier in Conflict of Laws to create substantially different problems by slightly varying the factual situations than it is in other courses, but I doubt that the difference in effort need be substantial where the purpose of the problems, as here, is to cover most of the subject matter of the course rather than merely to sample a student's knowledge of the course and his erudition.

The correction and grading of papers, five or six per day, four days a week, is clearly the most onerous feature of this format. This took about two hours a day, less time than is ordinarily spent preparing and organizing material for a conventional class in Conflict of Laws. The correcting task occasionally became boring and repetitive, particularly toward the end of each week, but ingenious arguments from some students often provided compensation and errors occasionally provided comic relief. It should be noted that these papers, being geared to problems fashioned by the instructor and designed to be argued from materials in the casebook and other familiar sources, did not ordinarily require the rigorous source check and library search demanded in the correction of seminar research papers and in the editing of law journal articles. Only occasionally would unfamiliar citations appear. The danger of plagiarism was practically non-existent.

Of course, this format will not affect the time ordinarily spent by an instructor in keeping abreast of his field. If the students are competent and interested, however, they can be relied upon to discover the most recent cases and relevant articles, sometimes before the instructor does.

The possibility of being bored by conducting four classes per week in which the same problem is argued should not be overlooked. Usually, the various approaches to the problem are exhausted by the third day, but not always. In fact sometimes it was hard to believe that the Thursday group was arguing the same problem as the Monday group.¹¹ But even if moderating arguments occasionally becomes repetitive and boring for the instructor—who has few opportunities to be entertained by his own erudition and deathless prose—it is certain that the experience rarely bores the students. I hope it is not treason to suggest that, even in the law teaching, student interest deserves primacy over instructor amusement.

Finally, by way of compensation, this format saves the instructor the job of preparing, administering and grading final examinations. This, I think, is not just a minor advantage. It is also appreciated by students who are asserting, with increasing volubility, (and with some justification) that examinations crammed into three or four hours at the end of a course are puerile, unrealistic and unfair.

¹¹Students were told to work individually and not to consult one another. Students in each group were also asked not to discuss the subject matter of class discussion with students in groups who were to take up the same problem on subsequent days. The disparity among arguments may suggest that the honor system really works.

Substantive Coverage

I found that the problem format permitted me to cover about as much of the material in the casebook as I would have covered using the traditional method. Although each problem¹² raised only a few issues, students had to read all the assigned material, including whole chapters, in order to extract pertinent authority.

Although presentation of the various traditional and emerging Conflict of Laws policies, theories and trends, in all their depth and complexity, and comparisons among them, cannot be orchestrated quite as well using the problem format as in the more traditional approach, the fact is that little of significance was omitted. More importantly, policies, theories and trends emerged as arguments used by students to support their own positions or to discredit their opponents. This heuristic approach, it seems to me, cannot help but increase comprehension of ideas which might otherwise seem to be complicated abstractions.

Flexibility

The course functioned smoothly with twenty-four students writing one paper a week for seven weeks and with forty-one students each writing a brief every other week for eight weeks. Conceivably, the course could be organized to serve about eighty students. The adjustable variables are:

- (1) The number of papers which each student is required to write during the quarter (or semester). The course might succeed if each student were required to write only three papers. However, the danger that students would not read materials during weeks in which they were not required to submit a paper and be prepared for oral argument would increase as the number of papers required of them diminished.
- (2) The percentage of papers corrected by the instructor. Originally, I told the 1968 group that I might correct only one of every two papers they submitted. However, I did grade all of them. It should be possible, without too much static, to correct only one-half or two-thirds of the papers submitted, returning the others ungraded. By varying the percentage each week, and sometimes by correcting all or most of the papers submitted during a single week, no student could be sure that the paper he passes in might not be graded.
- (3) The number of weekly classes and the number of students in each group. Obviously, the larger the group the more difficult it is to have all students participate in questioning and the greater the chance that a non-arguing student will not bother to prepare. Furthermore, it is preferable that each student face the possibility that he will have to present oral argument more than once during the course. In a four-hour ten-week course with eighty students each group

¹² In the spring, 1969, course six of the eight problems dealt with a situation in which State A had adopted a modified Keeton-O'Connell automobile accident compensation plan and State B retained the Common Law fault system. Using this framework it is possible, by varying the facts, to raise practically every significant problem in a contemporary Conflict of Laws course.

would contain twenty students and, since each group meets only once a week, each student would get only one opportunity to argue during the quarter¹³ (assuming two students argue at each meeting).

This problem might be solved by increasing the number of weekly meetings and the number of groups, but the solution adds a burden of time (and a potential for being bored) which ought to be compensated for by a reduction in teaching load. Of course, the problem is less acute in a four-hour fifteen-week (semester) course where some of the students could be required to argue twice.

An interesting feature of this format, where each student meets with the instructor but once a week, is that there is no necessary relationship between course credit hours and the number of weekly meetings. If I had set up my 1968 course along the same lines as the 1969 course I would have met each of two groups of twelve students once a week. I would have had only two hours of classroom contact while the students would still have received four hours course credit.

My experience suggests that, ideally, the number of students in each group should not exceed ten and all students should understand that they are expected to participate at each group meeting. However, the course would probably be favorably received even if each group had up to 20 students, even if each student knew that he would only have to argue once during the quarter, and even if the instructor only graded half the papers. However, each student should probably be required to write at least four papers during the term. Since paternalism is out-of-order anyway, it is probably a sufficient inducement to preparation to assure students that they will be graded on, and receive credit for, class participation, and to avoid telling them in advance which of them will be required to argue in a given week.¹⁴

Conclusion

There is nothing revolutionary about the suggested format. It does not purport, by itself, to create an inter-disciplinary experience or develop a policy-oriented approach. The content of the course and the legal philosophy on which it rests are entirely open to the instructor's choice. Research papers and discussions can be substituted for briefs and arguments. Materials from other disciplines and from sources other than a casebook can be assigned. "Real life" problems drawn from legal clinic might even be used in some courses. Thus, great variations and different directions are possible.¹⁵

¹³ This requires that assignments be commenced the week before the quarter begins and that each week of a ten-week quarter be used for argument. Realistically, the first week should be left open for discussion of the ground rules and for research and writing of the first paper. Furthermore, argument during the last week, when students are preparing for exams in other courses, may get sloppy. It may be more profitable, therefore, to use that week for a summary.

¹⁴ Toward the end of the term they will usually be able to figure it out for themselves.

¹⁵ There is no reason why it cannot be adopted for use in the second year. This is where Professor Cavers preferred to try out his recommended variation. Cavers, *In Advocacy of the Problem Method*, 43 *Colum.L.Rev.* 449, 459 (1943). Second-year students in my class seemed to respond as well as third-year students.

All the format does is meld elements of the problem method, moot court, law journal, the research seminar and the traditional case method into a happy combination which seems to receive the approbation of advanced law students. That it can elicit both substantial effort and almost universal approval from students in the last segment of their last year suggests that it may be worth whatever extra effort it requires from the instructor and whatever extra expense (for the smaller classes) it may cost the institution.